

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

VS.

AND

AND

Docket No. 166,573

ORDER

The application of the respondent for review by the Workers Compensation Appeals Board of an Award entered by Administrative Law Judge Alvin E. Witwer on June 6, 1994, came regularly on for oral argument by telephone conference.

APPEARANCES

Claimant appeared by and through his attorney Robert W. Harris of Kansas City, Kansas. Respondent, a qualified self-insured, appeared by and through its attorney Jeffrey M. Pfaff of Kansas City, Missouri. The Kansas Workers Compensation Fund appeared by and through their attorney Ronald P. Wood of Overland Park, Kansas. There were no other appearances.

RECORD

The record as specifically set forth in the Award of the Administrative Law Judge is herein adopted by the Appeals Board.

STIPULATIONS

The stipulations as specifically set forth in the Award of the Administrative Law Judge are herein adopted by the Appeals Board.

ISSUES

- (1) What is the nature and extent of claimant's injury and disability?
- (2) What, if any, is the liability of the Kansas Workers Compensation Fund?
- (3) Did the Administrative Law Judge err in admitting the independent medical examination report of Dr. Roger W. Hood without the necessity of Dr. Hood's deposition being taken and without the stipulation of the parties pursuant to K.S.A. 44-519.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the whole evidentiary record filed herein, and in addition the stipulations of the parties, the Appeals Board makes the following findings of fact and conclusions of law:

The Appeals Board finds the Award of the Administrative Law Judge accurately sets forth the appropriate findings of fact and conclusions of law in this matter and in so finding affirms and adopts same as its own.

The report of Dr. Hood in assessing claimant an eighteen percent (18%) permanent partial disability to the body as a whole is competent medical evidence and accurately depicts claimant's impairment.

Respondent's contention that a portion of this liability should be assessed to the Kansas Workers Compensation Fund pursuant to K.S.A. 44-566 and K.S.A. 44-567 is not supported by a preponderance of the credible evidence. Respondent failed to prove knowledge of a preexisting impairment. As such, liability against the Kansas Workers Compensation Fund is denied with the exception that the Kansas Workers Compensation Fund shall be responsible for its own attorney's fees incurred in this matter.

The respondent contends the medical report of Dr. Roger Hood should not be admissible without either a stipulation of the parties or the doctor's deposition being taken per K.S.A. 44-519. The independent medical examination of Dr. Hood was ordered by the Administrative Law Judge pursuant to K.S.A. 44-510e(a) which states in part:

"If the employer and employee are unable to agree upon the employee's functional impairment, such matter shall be referred by the administrative law judge to an independent health care provider who shall be selected by the administrative law judge from a list of health care providers maintained by the director. The health care provider selected by the director pursuant to this section shall issue an opinion regarding the employee's functional impairment which shall be considered by the administrative law judge in making the final determination."

The language of K.S.A. 44-510e(a) appears to supersede the language of K.S.A. 44-519 in that the independent medical examination report "shall" be considered by the administrative law judge. The statutory language in this instance is clear and

unambiguous. The Appeals Board finds the use of the independent medical examination of Dr. Hood by the Administrative Law Judge to be appropriate.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award of Administrative Law Judge Alvin E. Witwer, dated June 6, 1994, is affirmed in all respects and claimant is entitled to an Award against the respondent, General Motors Corporation, a qualified self-insured, for 7.71 weeks temporary total disability compensation at the rate of \$289.00 per week in the sum of \$2,228.19 followed thereafter by 407.29 weeks permanent partial general body disability compensation at the weekly rate of \$94.62 per week in the sum of \$38,537.78 for a total award of \$40,765.97 comprising an 18% permanent partial general body disability.

As of April 24, 1995, claimant would be entitled to 7.71 weeks temporary total disability compensation at the weekly rate of \$289.00 per week in the sum of \$2,228.19 followed thereafter by 148.29 weeks permanent partial general body disability compensation at the rate of \$94.62 in the sum of \$14,031.20 for a total of \$16,259.39 which is due and owing in one lump sum minus any amounts previously paid.

Thereafter the claimant is entitled to 259 weeks permanent partial general body disability at the rate of \$94.62 per week in the sum of \$24,506.58 until fully paid or until further order of the director.

Claimant's contract of employment with his attorney is approved subject to the provisions of K.S.A. 44-536.

The fees necessary to defray the expense of the Workers Compensation Act are hereby assessed against the respondent to be paid as follows:

Hostetler & Associates, Inc.	\$302.35
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IT IS SO ORDERED.

Dated this ____ day of May, 1995.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Robert W. Harris, Kansas City, Kansas
Jeffrey M. Pfaff, Kansas City, Missouri
Alvin E. Witwer, Administrative Law Judge

JERRY R. McKINNEY

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George Gomez, Director